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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA
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8 Billy Gene Cummings,) No. CV 09-489-TUC-RCC (JM)
9 Petitioner,) **ORDER**
10 vs.)
11 Charles L. Ryan, et al.,)
12 Respondents.)
13)
14)

15 On May 18, 2011, the Honorable Jacqueline Marshall, United States Magistrate
16 Judge, filed a Report and Recommendation ("Recommendation") in this action. (Doc.21).
17 The Recommendation advised the Court to DENY the Petition for Writ of Habeas Corpus
18 by a Person in State Custody pursuant to Title 28, U.S.C. § 2254. (Doc.1).

19 Petitioner objected to the Recommendation, arguing that it did not acknowledge that
20 his decision not to testify was due to his attorney's failure to explain that his prior
21 convictions would be sanitized. (Doc. 24 at 2). Petitioner also argues for the first time that
22 he was confused as to whether his testimony was necessary to establish the defenses of
23 consent and prostitution. *Id.* at 3.

24 Contrary to Petitioner's assertions, the Recommendation specifically considered
25 Petitioner's first argument. (Doc. 21 at 10:10-13). As to the second argument, it is precluded,
26 and Petitioner acknowledged in his Petitioner that "it was clear that Petitioner was going to
27 need to testify..." (Doc. 1 at 3m ¶ 8).
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1 The Court considers the Recommendation (Doc. 21) to be thorough and well-
2 reasoned. After a thorough and de novo review of the record and Petitioner's objections, the
3 Court will ADOPT the Recommendation of Magistrate Judge Marshall. Therefore,

4 **IT IS HEREBY ORDERED** that the Court adopts Magistrate Judge Marshall's
5 Report and Recommendation (Doc. 21).

6 **IT IS FURTHER ORDERED** that the Petitioner's Petition is DENIED.

7 DATED this 20th day of July, 2011.
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12 Raner C. Collins
13 United States District Judge
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 Raner C. Collins
 United States District Judge